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MICHAEL ROBAK, JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1978

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No. 78-1525

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IN RE: EXTENSION OF THE BOUNDARIES OF THE  
CITY OF PEARL, MISSISSIPPI

JOHN H. NOWLIN, JR.,

*Petitioner,*

vs.

CITY OF PEARL, MISSISSIPPI,

*Respondent.*

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## OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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**OPPOSITION TO THE PETITION FOR WRIT OF  
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OF MISSISSIPPI**

Respondent, City of Pearl files this its opposition to the Petition for Writ of Certiorari heretofore filed by the Petitioner in this cause.

**QUESTION PRESENTED**

The question presented in the Petition as stated by the petitioner herein is as follows:

1. Whether petitioner's right not to be deprived of his property without due process of law guaranteed by

the Fifth and Fourteenth Amendments to the Constitution of the United States was denied by the decision of the Supreme Court of Mississippi, which approved annexation of the City of Pearl.

The question as presented by the petitioner is broken down into two (2) sub-questions:

(1) The Supreme Court of Mississippi erroneously interpreted Section 13-1-145 of the Mississippi Code of 1972 annotated, in that said court held that the courts of Mississippi were vested with the jurisdiction to hear this cause without the introduction of oral testimony to the effect that notices had been posted in the proposed annexed areas, or the filing of an affidavit that this was done.

(2) By holding that it was not necessary for the Ordinance of Annexation to be recorded in the Ordinance Book of the Municipality until such time as the annexation had been approved by the courts of Mississippi.

### **REASONS FOR DENYING THE WRIT OF CERTIORARI**

Jurisdiction of this Court for granting of a Writ of Certiorari to the highest court of a State is contained in 28 U.S.C. 1257 and Rule 19 of this Court.

It is familiar learning that review by a Writ of Certiorari is not a matter of right, but within the sound discretion of the Court and will be granted only in those instances provided for by the statute and aforesaid rule.

In the first place, the question involved herein is not one of substance, and can have little, if any, effect upon the law other than as it touches this particular municipality in the State of Mississippi.

Questions upon which this Court will grant the Writ of Certiorari must be important ones. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74. The seriousness of a question is not sufficient within itself, for this Court to grant the Writ. *English v. Cunningham*, 361 U.S. 905, 907. Further, the concept of importance of a question regarding the granting or not granting of the Writ is important as it relates "to the public as distinguishing from importance to the parties involved". *Lane and Boler Corporation v. Western Well Works*, 261 U.S. 387, 393. It is to be seriously doubted as to whether or not there is another state which has the same statutory provisions regarding the posting of notices where a municipality plans to annex additional territory or that there are other states that have the same provisions regarding enrollment of Ordinances within a particular Ordinance Book.

Petitioners herein do not cite a single case which either holds or intimates that the procedure followed in this cause and approved by the Supreme Court of Mississippi even involves a Federal question.

The only two Federal decisions cited in the Petition for the Writ contain general statements regarding importance of due process clause of the United States Constitution, but in no way point to or deal with the particularities of the questions presented in this case.

It is submitted that general platitudes do not raise Federal questions and certainly fall far short of presenting a matter of substance which should be reviewed by this Court.

It is further respectfully submitted that the Supreme Court of Mississippi correctly decided the questions presented to it in this cause. The posting of notices in the proposed annexed area was in the nature of a summons

calling all interested parties into Court if they desired to contest the proposed annexed area.

It is universally accepted that when a summons has been served, the official making such service will note his return thereon. This is what was done in this particular case.

The purpose of a summons is to bring persons into court and in this particular instance they came. The record alone in this case consisted of thirteen (13) volumes of 2,158 pages, so it is apparent that the people interested not only came, but came in litigating mood. *In Re: Extension of the Boundaries of the City of Pearl, Mississippi, John H. Nowlin, Jr. v. City of Pearl*, 365 So. 2d 952, 956.

This Court has decided long ago that when a defendant in a Mississippi case who came and litigated a matter or so much as plead thereto, waived the service of notice regarding pendency of the litigation. *Walker v. Robbins*, 55 U.S. 584.

Primarily, the petitioner's entire Petition is a reargument of his case in regard to the construction of Mississippi Statutes and Mississippi decisions which were decided adversely to his contention by the Supreme Court of Mississippi. There simply is no Federal question presented or argued in his Petition in this case.

It is further the contention of the respondent that the Supreme Court of Mississippi correctly decided this case. It is not now and has never been the practice in the State of Mississippi or any other state, so far as the respondent knows, to introduce into evidence the summons and return of the official serving same, unless the return is attacked, which is not true in this case. It will be

noted by the Court, that the Petitioner does not deny or question in his Petition the fact that notices were published and the Deputy Sheriff made his return thereon, the same as he would do after the service of any kind of process. This is simply a matter of local procedure and State law.

Insofar as recording the Ordinance in the Ordinance Books is concerned, by no stretch of the imagination could this involve an important Federal question. To record an Ordinance in the Ordinance Book prior to the date of its effectiveness would mean that if the courts held the annexation to be void, the municipality would have to retract the recording of the Ordinance in the Ordinance Book and expunge the same therefrom.

By waiting and recording the Ordinance after it has run the gamut of the Courts is the only correct way to handle the matter for it is only then that in fact it becomes a valid Ordinance.

The meaning attributed by the highest court of a state to a statute of the state must be accepted by the United States Supreme Court on review as though it had been expressed in the statute. *Supreme Lodge, Knights of Pythias v. Meyer*, 265 U.S. 30, 32, *Swiss Oil Corporation v. Shanks*, 273 U.S. 407, 411-412 and *Keit v. Johnson*, 271 U.S. 1, 8.

Even if the Supreme Court of Mississippi had been in error in this cause, it does not mean the Petition for Writ of Certiorari should be sustained, for this Court does not sit primarily to correct errors in lower Court decisions. *Supreme Court Practice Fifth Edition*, Para. 4.18, page 297, *Robert L. Stern, Eugene Gressman*. To the same effect, *Ross v. Moffitt*, 417 U.S. 600, 616-617.



It is respectfully submitted the Writ of Certiorari meets neither criteria of Statute nor Rule 19 of this Court and should be denied.

Respectfully submitted,

CITY OF PEARL, MISSISSIPPI

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#### **CERTIFICATE**

I, William A. Bacon, of Bacon, Stone, Jernigan and Goodman, attorneys for the Respondent, City of Pearl, Mississippi do hereby certify that I have this day mailed by United States mail, postage pre-paid, three true and correct copies of the above and foregoing Opposition to the Petition for Writ of Certiorari to Honorable John C. McLaurin, Attorney for the Petitioner at his usual business address: John C. McLaurin, Post Office Box 25, Brandon, Mississippi 39042.

This 17th day of April, 1979.

WILLIAM A. BACON